

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

EMMANUEL G.,  
Claimant, vs.

WESTSIDE REGIONAL CENTER,  
Service Agency.

OAH Case No. L 200120455

DECISION

This matter came on regularly for hearing before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings on January 29, 2007, in Culver City, California.

The Westside Regional Center (Service Agency) was represented by Martha Thompson, Fair Hearing Coordinator. Emmanuel G. (Claimant) was represented by his mother, Antonia G. and his sister, Adrianna G.<sup>1</sup>

Evidence was received, the record was closed and the matter submitted on January 29, 2007.

ISSUES

1. The parties agreed that the following issue is resolved by agreement:

The Service Agency will reimburse Claimant the amount of \$75 for social skills training. Proof of Claimant's payments to Intercare Therapy Inc. for five sessions has already been submitted to the Service Agency.

2. The parties agreed that the following issue is to be decided:

Should the respite hours for Claimant be increased from 21 hours per month to as much as 36 hours per month?

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<sup>1</sup> Initials are used to maintain confidentiality.

## FACTUAL FINDINGS

1. Claimant was born November 27, 1987, and is a 19-year-old male who is a consumer of the Service Agency due to his diagnosis of autism. According to his most recent Individual Program Plan (IPP), dated November 28, 2006, he functions with a borderline level of intellectual skill. At the IPP meeting, Claimant's mother requested an increase in respite care from the 21 hours per month that had been authorized.

2. On November 30, 2006, the Service Agency wrote to Claimant's mother that the request to increase respite hours had been denied, stating that the level of 21 hours per month "reflects the appropriate number of hours of respite as related to his diagnosis and level of functioning." The denial was based upon the written service standards of the Service Agency and the Lanterman Act. On December 7, 2006, Claimant's mother submitted a Request for Fair Hearing, requesting that the Service Agency increase the number of monthly respite hours.

### Background and Other Services

3. Claimant's diagnosis of autism was first made at about age two. Claimant has been a consumer of the Service Agency since 1990. Services provided in the past include behavioral assessments and training, behavioral treatment plans, social skills training, assistance with the planning of special education services provided by the school district, and case management services. Presently, Claimant's family receives respite services, and Claimant is authorized to receive social skills training, two hours per week, until April 30, 2007.

4. Claimant's current IPP notes that Claimant attends high school in a vocational training program and has a one-to-one school aide "to help him increase his appropriate social skills and keep him safe." "He has poor social skills, especially with females. He will wander off if left unsupervised."

5. Claimant's service coordinator explained that Claimant will make inappropriate remarks of a sexual nature to females, and the documents note other behaviors, such as staring at and physical contact with females.

6. The Service Agency's position is based upon its service standards, which are written guidelines. Under a section titled "Family Support Services," the guidelines state that respite provides "family members a break from full-time care, enable family members to engage in activities that strengthen the family and allows family caregivers to participate in training or to spend time developing necessary resources."

The specific respite guidelines recognize that each family has different needs, but sets general levels based upon different factors. For example, up to 7 hours per month will be provided when the family needs time off from care to attend training or participate in

family or community activities. Up to 14 hours per month are provided when family members are required to give specialized intensive care to a disabled minor, when support systems are lacking, or there is unusual stress on the family, such as “when one family member is required to provide all care” or “when the nature of the disability requires an exorbitant amount of time in searching for and developing resources.”

Under the guidelines, up to 21 hours per month are provided “when other conditions exist that are more difficult to deal with on a full time basis,” such as aggressive or assaultive behavior or severe medical or physical challenges. Additional hours may be provided upon documentation of need, such as crisis situations. However, where behavioral challenges are a primary factor in the need for respite, the guidelines emphasize that other services, as opposed to respite, might be more successful in directly addressing those behaviors.

7. The Service Agency established that Claimant has received respite services from at least June 2000, at the level of 21 hours per month.

8. Claimant’s mother testified about the history of, and the need for, respite services. Previously, she received help in caring for Claimant from her sister (Claimant’s aunt), who lives with the family; however, when arrangements could not be made for the aunt to be paid enough for this care, she had to find a job outside of the home. Claimant’s sister also helped in providing care, however she has married and moved out of the house. Claimant’s father works two jobs and is not available to offer much assistance. Claimant’s mother has a busy schedule with Claimant, including preparing him for school in the morning and supervising him when he returns. Claimant leaves for school at 7:15 a.m. and returns between 2:30 and 4:00 p.m. During the day, Claimant is often involved in activities relating to Claimant, such as attending meetings at school or watching her granddaughter while her daughter does research on programs and services for Claimant.

When Claimant returns from school, his mother is actively involved in supervising his homework and reviewing his school journal, as well as family activities such as cleaning, doing laundry and preparing meals. Claimant’s aunt provided paid respite and assisted his mother for a few hours each weekday afternoon until November 2004; thereafter, respite has been arranged by Maxim Healthcare. Claimant’s mother also is responsible for all of Claimant’s supervision on the weekends, including church and family activities. Claimant’s mother also takes him to tutoring and social skills sessions.

9. Claimant’s mother and sister also testified to other factors that are not directly relevant to the question of respite but, generally, reflected dissatisfaction with the manner in which Claimant’s services have been coordinated. They feel that the Service Agency has not been active enough in identifying and offering possible services or in finding programs or providers for Claimant.

10. The Service Agency submitted behavioral assessments and treatment plans from 1995, 1997 and 1998. They indicate some difficulty on the part of the family in understanding and following the plans to try to alter Claimant's behaviors by regulating the way that the family interacts with him. These and other documents state that the family permitted Claimant to avoid responsibilities and found it hard to change their behaviors towards Claimant and, therefore, hard to change Claimant's behaviors as well. Although of historical interest, these documents are too old to be accepted as accurate depictions of events which may have occurred more recently than 1998.

11. In September 2003, The Social Circle issued a report of Claimant's participation in weekly social skills group therapy for the prior three months. The report notes progress in some areas and difficulties in others. The report indicates that the therapy will continue. There were no other reports from this provider. Again, this report is interesting historically, but may not create a current picture of Claimant's behaviors and needs. It is noted that, in the issue resolved by the parties, the Service Agency was ordered after a prior fair hearing to provide to Claimant five sessions of social skills training, which occurred in September 2006. Although Claimant attended these sessions, there were no reports submitted in evidence of his behaviors, progress, or treatments.

#### Responsibility Under the Law to Provide Services

12. In California, services for disabled persons are provided pursuant to the terms of the Lanterman Developmental Disabilities Act (found in the Welfare and Institutions Code). Persons diagnosed with autism are entitled to services under the Lanterman Act, section 4512, subdivision (a).<sup>2</sup>

13. Section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow them, "regardless of age or degree of disability, and at each stage of life" to integrate "into the mainstream life of the community" and to "approximate the pattern of everyday living available to people without disabilities of the same age." Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual's developmental potential and are "directed toward the achievement of the most independent, productive and normal lives possible." (Section 4502.) The regional centers will work with consumers and their families to secure "those services and supports that maximize opportunities and choices for living, working, learning, and recreating in the community."

One important mandate included within the statutory scheme is the flexibility necessary to meet unusual or unique circumstances, which is expressed in many different ways in the Lanterman Act. Regional centers are encouraged to employ innovative programs and techniques (section 4630, subdivision (b)); to find innovative and economical ways to

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<sup>2</sup> All citations are to the Welfare and Institutions Code, except where noted.

achieve the goals in an IPP (section 4651); and to utilize innovative service-delivery mechanisms (sections 4685, subdivision (c)(3) and 4791).

14. The relationship between the law, the disabled residents of California, the Department of Developmental Services (DDS) and regional centers is explained in the case of *Clemente v. Amundson and North Bay Regional Center* (1998) 60 Cal.App.4th 1094, 1097-8:

“The California Legislature enacted the Lanterman Act in 1977 ‘to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community.’ (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388 [211 Cal. Rptr. 758, 696 P.2d 150].) . . . [T]he Lanterman Act permitted many individuals previously placed in state hospitals to be housed and effectively treated in less restrictive community settings.

“Under the Lanterman Act, ‘[t]he State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge.’ (§ 4501.) The state also recognizes that ‘[p]ersons with developmental disabilities have the same legal rights and responsibilities [as those] guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California.’ (§ 4502.) Statutory rights include ‘[a] right to treatment and habilitation services and supports in the least restrictive environment’ at state expense. (§ 4502, subd. (a), § 4620, §§ 4646-4648; see also *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d at p. 389.) The Supreme Court construed the Lanterman Act to grant developmentally disabled persons ‘the right to be provided at state expense with only such services as are consistent with its purpose.’ (*Id.* at p. 393.)

“The Lanterman Act authorizes DDS to contract with regional centers . . . to provide developmentally disabled individuals with ‘access to the services and supports best suited to them throughout their lifetime.’ (§ 4620.) The regional centers are operated by private nonprofit community agencies. (*Ibid.*) The rights of developmentally disabled persons and the obligations of the state toward them are implemented through individual program plans (IPP) which regional centers must develop for each client. (§ 4646, 4647; *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d at p. 390.)

“DDS is authorized to promote uniformity and cost-effectiveness in the operation of regional centers. (*Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d at p. 389, citing § 4631, subd. (a), § 4681, and § 4780.5.).)” [Footnotes omitted]

15. Throughout the applicable statutes and regulations, the state level fair hearing is referred to as an appeal of the Service Agency's decision. Therefore, Evidence Code section 500 would apply to place the burden on the party seeking to establish the facts "essential to the claim for relief" being asserted. In this case, as Claimant seeks to increase a service, he has the burden of proving the facts supporting that increase.

16. Respite is one of the specific services available to consumers listed in section 4502, subdivision (b). In section 4690.2, subdivision (a), "In-home respite services" are defined as "intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, . . . designed to do all of the following:

"(1) Assist family members in maintaining the client at home.

"(2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members;

"(3) Relieve family members from the constantly demanding responsibility of caring for the client.

"(4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members."

See also, California Code of Regulations, title 17, section 54302, subdivision (a)(38).

17. The evidence established that the Service Agency made an appropriate evaluation of the need for respite services by Claimant's family. Although there have been decreases in the amount of support provided other members of Claimant's family (i.e., his aunt and sister), the 21 hours presently provided are within the appropriate category as set forth in the service standards. Claimant's mother did not establish that the service standards are improper, or that the Service Agency applied them incorrectly, or that there is a crisis situation or other exigent circumstances that justify an increase in respite hours under the service standards. For these reasons, the Service Agency properly denied the request to increase respite hours.

### DISCUSSION AND CONCLUSIONS OF LAW

1. Based on the agreement of the parties, the Service Agency will reimburse Claimant the amount of \$75 for social skills training by Intercare Therapy Inc.

2. Grounds exist to order the Service Agency to provide continued funding for Claimant's family to receive respite services at the level of 21 hours per month, but not more, for the reasons set forth in Factual Findings 1, 2, 6, 7, 8, and 12 through 17.

3. The Service Agency properly denied Claimant's request to increase respite hours. Claimant's appeal of that denial is dismissed.

4. Claimant's services should be reviewed at the next IPP meeting to determine the levels of services and funding necessitated by the circumstances as they exist at that time, unless there are changes in circumstances that require an earlier review.

ORDER

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

1. The Service Agency shall reimburse Claimant the amount of \$75 for social skills training.

2. The Claimant's appeal of the Service Agency's decision to deny an increase in respite services is dismissed. The Service Agency shall continue to provide funding for respite services at the level of 21 hours per month until the next IPP, unless there are changes in circumstances that require an earlier review.

DATED: February 7, 2007.

DAVID B. ROSENMAN  
Administrative Law Judge  
Office of Administrative Hearings

**NOTE: This is a final administrative decision. Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days of receiving this decision. [Welfare and Institutions Code section 4712.5(a)]**